

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TRAVIS CONKLIN, BCP #033556,)
)
)
Plaintiff,) Civil Action No. 19-338
)
)
v.) Judge Cathy Bissoon
) Magistrate Judge Maureen P. Kelly
BUTLER COUNTY PRISON)
ADMINISTRATION, et. al.,)
)
Defendants.)

MEMORANDUM ORDER

This case has been referred to United States Magistrate Maureen Kelly for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On April 9, 2020, the Magistrate Judge issued a Report (“R&R,” Doc. 53) recommending that Defendant Rabbit Moishe Mayir Vogel’s (“Rabbi Vogel”) Motion to Dismiss Pursuant to Fed. R. Civ. 12(b)(1) and (6) (“Rabbi Vogel’s MTD,” Doc. 35) be granted and Defendant Trinity Services Group, Inc.’s (“Trinity”) Motion to Dismiss Plaintiff’s Amended Complaint (“Trinity’s MTD,” Doc. 39) be denied without prejudice. Service of the Report and Recommendation (“R&R”) was made on the parties, and Trinity filed an Objection. *See* Doc. 54.

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the Objection and Response thereto, the Magistrate Judge’s R&R will be adopted in part and rejected in part.

First, the Court agrees with and adopts the R&R’s conclusion that Plaintiff has failed to demonstrate that Rabbi Vogel is a state actor for the purposes of Plaintiff’s 42 U.S.C. § 1983 and

First Amendment claims. R&R at 6, 8. The Court also agrees with the R&R's conclusion that the various state and federal statutory claims do not permit a private cause of action or are otherwise inapplicable to Plaintiff's cause of action and must be dismissed. Id. at 7-8.

However, the Court finds that Plaintiff's failure to provide any facts regarding the identity of the "Kitchen Supervisory Staff" constitutes failure to state a claim for relief pursuant to Fed. R. Civ. 12(b)(6). In the Amended Complaint, Plaintiff makes allegations against a general category of "Kitchen Supervisory Staff" but does not plead any facts identifying who these individuals are or what specific actions they undertook to provide a cause of action. Amended Complaint at ¶ 7. Additionally, although Trinity is not identified in the Amended Complaint, it received a copy of the Amended Complaint, related pleadings, and copies of waivers of service directed to "Kitchen Supervisory Staff" at its corporate headquarters. Trinity MTD at ¶¶ 5, 8.

While the Court understands Plaintiff's *pro se* status entitles him to a more liberal reading of his pleadings, Plaintiff has not pleaded any facts indicating why he has thus far been unable to identify specifically any individuals who are a part of the "Kitchen Supervisory Staff" who he names in his Complaint. See Objections at 2. While "Doe defendants are routinely used as stand-ins for real parties until discovery permits the intended defendants to be installed," Plaintiff has not pled facts explaining why he has been unable to identify this category of defendants. Scheetz v. Morning Call, Inc., 130 F.R.D. 34, 36–37 (E.D. Pa. 1990). Consequently, Plaintiff's claims against "Kitchen Supervisory Staff" shall be dismissed without prejudice and attempted service quashed.

Consistent with the above, it is **ORDERED** that the R&R is **ADOPTED IN PART** and **REJECTED IN PART**. Rabbi Vogel's Motion to Dismiss is **GRANTED**. Plaintiff's claims

against Rabbi Vogel are **DISMISSED WITH PREJUDICE**. Trinity's Motion to Dismiss is GRANTED. Plaintiff's claims against "Kitchen Supervisory Staff" are **DISMISSED WITHOUT PREJUDICE** and service quashed. Plaintiff, having already once amended his pleadings, must make last, best efforts to amend his claims and plead facts identifying the defendants he seeks to name as "Kitchen Supervisory Staff," because the Court does not anticipate granting further opportunity. Plaintiff shall file an Amended Complaint on or before July 7, 2020, or this Order will convert to a dismissal with prejudice for all claims against "Kitchen Supervisory Staff."

IT IS SO ORDERED.

June 16, 2020

s\Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record